

## Summary of the doctoral dissertation

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Dissertation thesis: "The new model of total penalty – selected substantive issues".

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The subject of the doctoral thesis is devoted to institution of total penalty, which is primarily described in the IX section of k.k. As the title of the work indicates, the main subject of research and scientific deliberations are selected substantive issues, which in the author's opinion are important and controversial.

One of the substantial reasons for choosing this topic were lack of compromise between members of the criminal law doctrine and judiciary towards many essential, often fundamental, issues connected with the objective institution. Lack of agreement towards the total penalty's legal nature, its purpose and function in the system, led to long-standing disputes. Opinion that total penalty was an institution which primary goal was to improve the convicted legal situation, which was deeply rooted in legal views that were expressed on grounds of Penal Code of 1932<sup>1</sup>, led to many disagreements, mainly concerning interpretation of art. 89 k.k. Due to indicated discrepancies on fundamental issues, furthermore further amendments of the the k.k., especially from February 2015, the need for a deep analysis should be considered necessary.

The purpose of the dissertation is a dogmatic analysis of section's IX k.k. regulations as well as section's 60 k.p.k. and other reduction mechanism that function in the universal system of polish criminal law. In the III chapter of the doctoral thesis the author undertook an analysis of art. 89 k.k. regulation from the positions of theory of law. The decision to include these types of considerations were as follows. In literature it is repeatedly indicated that they bring clarity and possibility for verification. The establishment of the directive character of art. 89 § 1 k.k. led the author of the thesis to critically question the prevailing interpretation paradigm which was presented by polish Supreme Court of the grounds of k.k. from 01.09.1998 to 07.06.2010. In the dissertation there was also adopted latest achievements of theory of legal text interpretation. The author stands on a position that every word of the legal text has to be interpreted (according to the *omnia sunt interpretanda* rule) and it has to go through every rule of interpretation. Author rejects once presented in the literature jurisdiction principles *clara non sunt interpretanda* and *interpretatio cessat in claris*.

The dissertation consists of three chapters and many subsections. The work begins with a chapter devoted to the total penalty's legal nature, its purpose and function in the system and directives. First chapter begins with a historical introduction to the above issues,

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<sup>1</sup> Decree of the President of Poland of July 11<sup>th</sup> 1932 – Penal Code (Dz.U. 1932, no. 60, sec. 571 with further amendments).



in which the analysis of the provisions that preceded regulations of section IX k.k., is performed with the accordance to the Penal Code of 1932, the Penal Code of 1969<sup>2</sup> and amendments to k.k. This part of the work presents the views of the past doctrine and the controversies and discrepancies existing in the jurisprudence as well as in the literature of that time. The further part of the work contains dogmatic interpretation of the evolution of indicated regulations. Therein, the accompanying amendments, doctrinal statements and selected opinions in the discussion on amending the provision of articles, 86 and 89 k.k. have been presented. As a result of the analysis author states that total penalty is one of the reduction mechanisms which in its entirety are strictly connected with the *Einheitstheorie* rule. Total penalty is an institution of the substantive criminal law which is deeply connected with the plane of punishment. The chapter ends with interpretation of the art. 85a k.k. regulation.

Chapter II was devoted to reflections on the essence of actual convergence of crimes. The basic assumption which was undertaken in objective chapter was giving an answer to the question – what was the function of the condition of crimes undistribution? The need for a deep analysis on this subject resulted of changes resulting from amendment of February 2015, which changed art. 85 k.k. The above issue was analysed in the historical context of regulations of the Penal Code of 1932, the Penal Code of 1969. An important issue in the dissertation was interpretation of the above-mentioned condition in the systemic context of other reduction mechanism and art. 108 k.k. regulation.

Ultimately, author of the dissertation states that condition of undistribution of the actual convergence of crimes was a premise of total penalty, not the actual convergence of crimes. Consequently, amendment of February 2015 did not remove objective institution from k.k. In the authors opinion that kind of convergence of crimes should be understood as two or more crimes committed by the same person, which led to rule of two or more separate individual penalties.

The last chapter of the dissertation concerns directive analysis of art. 89 § 1 k.k. and problems bound up with objective regulation. The analysis was performed on grounds of legal statutes from 01.09.1998 r. to 07.06.2010 and from 08.06.2010 to 30.06.2015, as well as from 01.07.2015. The chapter beings with a historical introduction to the issues that were analysed, with a detailed reference to the literature and jurisdiction. The main problems of this chapter were:

- the possibility of connecting imprisonment penalty which was ruled in probation with the same type of penalty imposed without probation,
- the possibility of connecting imprisonment penalty when every of the penalties was ruled in probation,
- single genre or different genre of those types of penalties.

Conducted research, led the author to critically question the prevailing position of Supreme Court on art. 89 interpretation. In objective chapter the author also stated that the amendment of February 2015 fundamentally changed the directive character of art. 89 regulations.

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<sup>2</sup>Act of April 19<sup>th</sup> 1969 – Penal Code (Dz.U. 1969, no.13, sec. 94 with further amendments)

Due to presenting own comments by the author during the dissertation, a separate chapter for *de lege ferenda* demands was not isolated.

**Keywords:** "total penalty", "actual convergence of crimes", "reduction mechanisms", "interpretation".

Marcin Horzowski